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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA244]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Renewal of U.S. Navy Target and Missile Launch Activities on San Nicolas Island

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to U.S. Navy (Navy) to incidentally harass marine mammals incidental to target and missile launch activities on San Nicolas Island (SNI).

DATES: This Renewal IHA is valid from June 19, 2020 through June 11, 2021.

FOR FURTHER INFORMATION CONTACT: Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine->

mammal-protection-act. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the **Description of the Specified Activities and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of the Specified Activities and Anticipated Impacts** section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the initial notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:
 - (1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.” The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

History of Request

On June 12, 2019, NMFS issued an IHA to the Navy to take marine mammals incidental to U.S. Navy Target and Missile Launch Activities on San Nicolas Island, California (84 FR 28462; June 19, 2019), effective from June 12, 2019 through June 11, 2020. On April 14, 2020, NMFS received an application for the Renewal of that initial

IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested are identical. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-target-and-missile-launch-activities-san-nicolas-0>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

The Navy will continue a target and missile launch program from two launch sites on SNI. Missiles vary from tactical and developmental weapons to target missiles used to test defensive strategies and other weapons systems. Some launch events involve a single missile, while others involve the launch of multiple missiles in quick succession. The Navy plans to conduct a maximum of 40 missile launch events from SNI, but the total may be less than 40 depending on operational requirements. No more than 25 launches have occurred in any single year since 2001 (Table 1).

Table 1 -- The Total Number of Launches That Have Occurred Since 2001 at SNI

Time Period	Number of Launches
August 2001 to October 2005	69
February 2006 to December 2009	11
January 2010 to December 2014	36
December 2015 to November 2018	30
June 2019 to March 2020	12

Launch timing will be determined by operational, meteorological, and logistical factors. Up to 10 of the 40 launches may occur at night; night launches are also dependent on operational requirements and will only be conducted when required by test objectives. These planned activities are identical to those in the Initial IHA and are described in detail in the Initial Proposed IHA (84 FR 18809; May 2, 2019).

Anticipated impacts, which would consist of Level B harassment of marine mammals, would also be identical to those analyzed and authorized in the Initial IHA (84 FR 28462; June 19, 2019). The Navy's request is for take of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) by Level B harassment only. All flights over SNI will be subsonic; therefore, there will be no sonic booms that could affect pinnipeds hauled out at sites on SNI. Neither Navy nor NMFS expects serious injury or mortality to result from this activity.

Detailed Description of the Activity

A detailed description of the target and missile launch activities for which take is authorized here may be found in the notices of the Proposed and Final IHAs for the initial authorization. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. This Renewal would be effective for a period of one year from the date of issuance.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the notices of the Proposed and Final IHAs for the initial authorization.

NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities section contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for the authorized take may be found in the Notices of the Proposed IHA for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the Proposed and Final IHAs for the initial authorization. Specifically, the source levels, days of operation, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Further, the 2019 monitoring data received from the Navy suggests that the actual number of marine mammals taken during the Navy launches remained well under the number authorized in the initial IHA and in this Renewal IHA. The stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as

do the number of takes, which are indicated below in Table 2.

Table 2 -- Proposed Level B Harassment Take for Pinnipeds on SNI

Species	Authorized Level B harassment	Percent of Stock Abundance taken by Level B harassment (assuming each instance is different individual)
California sea lion	11,000	257,606 (4.27 percent)
Harbor seal	480	30,968 (less than 2 percent)
Northern elephant seal	40	179,000 (less than 1 percent)

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are authorized for this renewal:

Mitigation

Operation Restrictions

Personnel must not enter pinniped haulouts. Personnel may be adjacent to pinniped haulouts prior to and following a launch for monitoring purposes. All aircraft and helicopter flight paths must maintain a minimum distance of 305 meters (m) from recognized seal haulouts and rookeries, to the maximum extent practicable. Missiles must not cross over pinniped haulouts at elevations less than 305 m (1,000 feet (ft)).

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, the Navy must consult with NMFS before the next launch event.

The Navy must review the launch procedure and monitoring methods, in cooperation with NMFS, if any incidents of injury or mortality of a pinniped are discovered during post-launch surveys, or if surveys indicate possible effects to the distribution, size, or productivity of the affected pinniped populations as a result of the specified activities. If necessary, appropriate changes must be made through modification to this Authorization prior to conducting the next launch of the same vehicle.

Timing Restrictions

The Navy may not conduct more than 10 launch events at night. Launches must not occur during February through April, to the maximum extent practicable. Launches must be limited during January through February and June through July, to the maximum extent practicable.

Monitoring Measures

The Navy must obtain visual, video and audio, and acoustic data from up to three pinniped haulout monitoring sites during each launch event, to the maximum extent practicable. The holder of this IHA is required to abide by the following marine mammal and acoustic monitoring requirements:

Visual Monitoring

Marine mammal monitoring must be conducted by qualified, trained protected species observers. The following visual monitoring measures will be conducted during preparations for video and acoustic monitoring, as described in *Video and Audio*

Monitoring section below: 1) Visual monitoring must be conducted before and after launches, including scanning the affected haulout beaches and counting the number and species of pinnipeds over a 15-30 minute period; 2) Prior to a launch event, Navy personnel must make observations of the monitored pinniped haulout and record the numbers and species of pinnipeds observed on field data sheets; and 3) After a launch event, Navy personnel must return to the monitored pinniped haulout and record the numbers and species of pinnipeds that remain on the haulout sites and any notable changes.

Video and Audio Monitoring

Before each launch, Navy personnel must set up or activate up to three video cameras (either high-definition video cameras, or Forward-Looking Infrared Radiometer (FLIR) thermal imaging cameras for night launch events) such that they overlook the monitoring sites. Each camera will be set to record a focal group of pinnipeds within the haulout for the maximum recording time permitted by the camera capacity. Video and audio monitoring must be conducted by recording continuously from a minimum of two hours before the event to approximately one hour after the event in order to:

Determine the composition of the focal subgroup of pinnipeds (approximate numbers and sexes of each age class).

Describe the launch event, including documenting the occurrence of a launch event, the type of target/missile launched, the timing of the event, and duration of audibility.

Document movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement (slow or vigorous). In addition, the

following variables concerning the circumstances of the observations must also be recorded from the videotape or from direct observations at the site:

1. Study location,
2. Local time,
3. Weather (including an estimate of wind strength and direction, and presence of precipitation), and
4. Tide state.

Identify and document any change in behavior or movements of pinnipeds that occurs at the time of the launch event.

Compare received levels of launch sound with pinniped responses, based on acoustic and behavioral data from up to three monitoring sites at different distances from the launch site and missile path during each launch; from the data accumulated across a series of launches, to attempt to establish the “dose-response” relationship for launch sounds under different launch conditions if possible.

Ascertain periods or launch conditions when pinnipeds are most and least responsive to launch activities. Lastly, document take by harassment: 1) Pinnipeds that are exposed to launch sounds strong enough to cause a temporary threshold shift (TTS); or 2) Pinnipeds that leave the haulout site, or exhibit prolonged movement (greater than 10 m) or prolonged behavioral changes (such as pups separated from mothers) relative to their behavior immediately prior to the launch.

Acoustic Monitoring

The Navy must use up to four autonomous audio recorders to make acoustical measurements. During each launch, these must be located as close as practicable to pinniped haulout monitoring sites and near the launch pad itself. The monitored pinniped haulout sites must typically include one site as close as possible to the missile's planned flight path and one or two locations farther from the flight path within the area of potential impact with pinnipeds present. Autonomous Terrestrial Acoustic Recorders must be deployed at the recording locations on the launch day well before the launch time, and must be retrieved later the same day. Acoustic measurements must be collected and reported consistent with section 13.2 of the Navy's application.

Reporting

A draft report on all monitoring conducted under the IHA must be submitted within 90 calendar days of the completion of marine mammal and acoustic monitoring or 60 days prior to the issuance of any subsequent IHA or incidental take regulations for this project, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in Section 5 of the Authorization.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as serious injury, or mortality, the Navy must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources (301-427-8401) and the West Coast Stranding Coordinator (562-980-3230). The report must include the following information:

1. Time and date of the incident;

2. Description of the incident;
3. Environmental conditions (*e.g.*, wind speed and direction, cloud cover, and visibility);
4. Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
5. Species identification or description of the animal(s) involved;
6. Fate of the animal(s); and
7. Photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy may not resume their activities until notified by NMFS.

In the event the Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), the Navy must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS. The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that the Navy discovers an injured or dead large whale or other cetaceans, and the lead observer determines that the injury or death is not associated with

or related to the specified activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Navy must report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS, within 24 hours of the discovery.

This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Public Comments

A notice of NMFS' proposal to issue a Renewal IHA to the Navy was published in the **Federal Register** on June 1, 2020 (85 FR 33124). That notice either described, or referenced descriptions of, the Navy's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received a comment letter from one entity, the Marine Mammal Commission (Commission). The comments and our responses are summarized below.

Comment 1: The Commission recommended that NMFS refrain from issuing the Navy's authorization renewal until after the public comment period closes on 16 June 2020 and all comments received are fully considered.

Response: NMFS concurs and will not issue until the public comment period closes and all comments are considered fully.

Comment 2: the Commission again recommends that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice

process, which is similarly expeditious and fulfills NMFS's intent to maximize efficiencies. The Commission has further recommended that, if NMFS continues to propose to issue renewals, that it (1) stipulate that a renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a renewal, (b) on its webpage detailing the renewal process, and (c) in all draft and final authorizations that include a term and condition for a renewal and, (2) if NMFS declines to adopt this recommendation, explain fully its rationale for not doing so.

Response: While NMFS has consistently expressed the intent to implement Renewals as one-time opportunities, as the Commission noted, NMFS recently concurred with the Commission's recommendation to more explicitly describe this intent in all **Federal Register** notices and IHAs, and the website. However, NMFS does not agree with the Commission's recommendation to refrain from issuing Renewals and, therefore, does not adopt the Commission's recommendation. NMFS has addressed the Commission's concerns in multiple FR notices (*e.g.*, 84 FR 52464, October 2, 2019), but has also committed to provide a detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Comment 3: The Commission recommends that NMFS review applications and **Federal Register** notices more thoroughly prior to submitting them to the **Federal Register** for public comment.

Response: Renewal language was erroneously included in the draft IHA and NMFS appreciates the Commission's comment noting it. NMFS will continue to review **Federal Register** notices as thoroughly as possible given available resources and required timelines.

Comment 4: The Commission recommends that NMFS review their comments on the initial IHA.

Response: NMFS reviewed the Commission's comments on the initial IHA and the responses published in the **Federal Register** notice announcing the issuance of the final initial 2019 IHA (84 FR 28462; June 19, 2019) remain valid.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHA with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the Renewal IHA qualifies to be categorically excluded from further NEPA review.

Determinations

The action of this Renewal IHA, target and missile launch activities, will be identical to the activities analyzed in the Initial IHA. Based on the analysis detailed in the notice of the Initial IHA authorization of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of

the monitoring and mitigation measures, NMFS found that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (4) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a Renewal IHA to the Navy for the take of marine mammals incidental to conducting target and missile launch activities on SNI, California from June 19, 2020 through June 11, 2021.

Dated: June 23, 2020.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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